

Introduction

In our January motor crime update we provide market insight into the key developments over the last month and the current challenges faced, including:

- Highways England could face manslaughter charge over smart motorways
- Cameras used to target tailgating
- Further consultation on automated vehicles
- Ban on tyres 10 years or older
- Council faces judicial review over cycle lane removal
- Electric vehicles to be powered by Scalextric roads
- First all-electric bus cities
- Driving in the EU post-Brexit
- Police to crack down on illegal e-scooters

Smart motorways - on the road to corporate manslaughter?

"Hard shoulders [are] analogous to emergency doors on aeroplanes or lifeboats on ships in that they are not used most of the time. But they are there."[1]

We previously looked at the use and perceived benefits of smart motorways, criticisms of the system^[2], as well as the Government's evidence stocktake and action plan^[3]. Two coroners have now separately concluded that smart motorways "present an ongoing risk of future deaths" and that Highways England could face a manslaughter charge.

No hard shoulder

Sheffield coroner David Urpeth said the primary cause of death of two motorists on the M1 in South Yorkshire in June 2019 was the careless driving of lorry driver Przemyslaw Szuba, who crashed into their vehicles as they stood stationary in lane one following a minor incident.

However, recording a conclusion of unlawful killing, the coroner said: "I find, as a finding of fact, it is clear a lack of hard shoulder contributed to this tragedy."

The incident occurred on 7 June 2019 near junction 34 on the northbound section of the M1. Shortly after 8am, a transit van and a Ford Focus were involved in a minor collision. The drivers, Jason Mercer and Alexandru Murgeanu, pulled over into the inside lane, which had been converted from the hard shoulder as part of the section's transition to a four-lane smart motorway. The two men were standing between their vehicles, exchanging details, when an oncoming HGV struck the transit van, tragically killing both men.

The police investigation found that stationary vehicles would have been visible to the HGV driver for at least seven seconds and he would have had up to five seconds in which to react.

He did not, however, adjust his speed or road lane.

When the defendant was sentenced back in October 2020^[4], Judge Jeremy Richardson said that the main cause of the collision was the defendant's inattention to the road ahead, although the collision would not have occurred "had there been a hard shoulder, or had the victims driven on for another mile to the refuge".

The judge added that although he had "no idea what research was undertaken when the decision was made to remove the hard shoulder on certain smart motorways", he could not "help but think that placing refuges at intervals of nearly three miles or even every one-and-half miles is a less than ideal or adequate substitute for a full hard-shoulder."

Following the sentencing, Mr Mercer's wife, Claire Mercer, said that she did not "believe the correct person [was] taking responsibility" for the fatal incident, which would not have occurred had there been a hard shoulder.

Not a public inquiry

During the recent Inquest into the motorists' deaths, the coroner emphasised whilst it was not his role to conduct a public inquiry into smart motorways, he outlined a number of areas he believed should be considered by the Government and Highways England.

Previous criticisms surrounding smart motorways have primarily arisen following a number of fatalities involving stranded vehicles and vehicles proceeding down closed lanes. These criticisms focused on those with a "dynamic hard shoulder" (where the hard shoulder is temporarily opened up to traffic) and those with "all lane running" (where the full width of the road is usable with emergency refuge area alongside), with members of the public being unsure about using the hard shoulder.

^[1] Judge Jeremy Richardson, sentencing Przemyslaw Szuba

https://www.clydeco.com/en/insights/2019/11/smart-motorways-outstanding-roads-or-seriously-in

^[3] https://www.clydeco.com/es/insights/2020/04/putting-brake-smart-motorways-government-publish-e

^[4] Sheffield Magistrates' Court, 19 October 2020

The coroner stated that it was necessary to combat this confusion, saying that whilst it was clear with hindsight that Mr Mercer and Mr Murgeanu should have continued to a refuge on the motorway, which was about a mile further north, their decision "although unwise", was an "understandable one."

The coroner said he would be writing to Highways England and Secretary of State for Transport Grant Shapps recommending a review of these roads.

Guilty of corporate manslaughter?

During a pre-inquest review hearing into a separate case involving the death of Nargis Begum^[5], the coroner confirmed she would decide whether to refer Highways England to the Crown Prosecution Service (CPS). The stateowned company, which operates motorways and major A-roads in England, could have a case to answer for corporate manslaughter or gross negligence manslaughter.

Mrs Begum was the passenger in a Nissan Qashqai driven by her husband when it broke down on the M1 in South Yorkshire, near Woodall services, in September 2018. The incident was on a stretch without a hard shoulder. Mrs Begum was waiting for help near her car when another vehicle collided with the Nissan.

The coroner heard there was a delay of 16 minutes and 21 seconds between the car breaking down and the collision. It was another six minutes and 15 seconds before warning signs were activated alerting others to the break down. This made a total of 22 minutes and 36 seconds between the breakdown and warnings being displayed.

The case was adjourned until February 11 for a further pre-inquest review. Highways England said: "Our thoughts are with the family of Mrs Begum and all those affected by this tragic

incident. We will assist the coroner in the forthcoming inquest and provide the information she requested."

The future viability of smart motorways now remains seriously in question, with Mr Mercer's widow stating:

"That means that if people break down on one of these motorways, like Jason, they'll have no idea where to go. There is no escape. These are not smart roads, they are death traps." [6]

⁶ https://www.hudgellsolicitors.co.uk/news/inquests/widow-of-man-killed-on-smart-motorway-welcomes-coroners-call-for-wider-investigation-into-their-safety/

Keep your distance! Cameras used to target tailgating

"Tailgating, even below the speed limit, is incredibly dangerous. Hopefully the presence of tailgate cameras will convince drivers to stick to the twosecond rule because the consequences of driving too close can be fatal." [7]

New roadside cameras could be introduced across England under plans to target tailgating on motorways ^[8]. Last year, 28 fatal and 599 serious road crashes were logged in which "following too close" was identified as a contributory factor. The total, 627, was up from 444 a year earlier and 483 in 2013.

Highways England is analysing a trial of the technology on a small section of the M1 through Northamptonshire, with a view to launching it elsewhere on the network. The move follows the publication of figures from the Department for Transport showing that serious crashes caused by tailgating drivers have jumped to their highest level for at least seven years.

In only two months the cameras have been used to identify 26,000 tailgating cars, vans, trucks and buses^[9]. The figures, which cover the period from early October to the first week of December, show that 3,700 offenders have been caught multiple times. In some cases, the very worst drivers have been clocked tailgating other vehicles as many as 12 times on one stretch of road.

The cameras, developed by the consultants Aecom, have been installed on a 150m stretch of the motorway and operate in a similar way to speed cameras by identifying number plates and taking readings of the distance between vehicles. A series of cameras is deployed in unison to determine whether the tailgating is a result of deliberate action or conventional manoeuvres such as overtaking, changing lanes or sudden braking.

Drivers can be fined £100 and handed three penalty points for tailgating, although the cameras are not currently used for prosecutions. Working in partnership with the police, drivers spotted tailgating by the cameras will initially receive a warning letter in the post.

Under the Highway Code, motorists are supposed to leave at least a two-second gap between themselves and the vehicle in front, with a longer distance on the fastest roads^[10]. The RAC advises tailgated motorists against slowing down in an effort to force the other driver to do the same. Instead they suggest remaining calm and shifting lanes or pulling over to let the other driver pass^[11]. Painted chevrons can also help significantly reduce accidents.

Jeremy Phillips, Highways England head of road safety, said:

"We understand that most tailgating is unintentional by drivers who are simply unaware they are dangerously invading someone else's space. But not leaving enough space between you and the vehicle in front can be very frightening and intimidating - it could also prove fatal."

^[7] Edmund King, President of the AA

^[8] The Times, Saturday 19 December [9] https://webcache.googleusercontent.com/search?q=cache:C7BZw8SqeUgJ:https://www.rac.co.uk/drive/news/motoring-news/the-new-cameras-targeting-tailgaters-coming-to-a-motorway-near-you/+&cd=2&hl=en&ct=clnk&gl=uk

^{[10] &}lt;u>https://www.gov.uk/browse/driving/highway-code-road-safety</u>

¹¹ https://www.rac.co.uk/drive/advice/driving-advice/tailgating-what-you-need-to-know/

Automated vehicles- third consultation on regulatory framework

"When should a vehicle be considered to be capable of 'driving itself'? This question is highly controversial, with fraught discussion over forms of automation which rely on the human user to take control in some circumstances."[12]

The Law Commission's third and final consultation proposing a regulatory framework for Automated Vehicles (AVs) is now in progress, in preparation for these vehicles' safe deployment on British roads^[13].

The purpose of the consultation is to seek views on a proposed regulatory framework for automated vehicles, which will promote safety and technological advancement. The proposals will also retain the flexibility required to regulate for uncertain future development.

Key proposals include:

- The creation of distinctive rules for two types of automated vehicle: Category-1 AVs that might require human driving for part of a journey (for example, AVs that only drive themselves on the motorway) and Category-2 AVs that can complete a whole journey unaided and without a user in the vehicle (such as a remotely operated taxi fleet).
- Proposals to enhance safety, for the deployment of AVs on British roads and during their lifetime. This covers vehicle approval as well as software updates and cybersecurity risks. It includes a shift away from the criminal enforcement of traffic rules towards a new no-blame safety culture including a new range of regulatory sanctions.
- New legal roles to reflect legal responsibilities arising from automated driving: for developers of AVs, users of AVs that are less than drivers but more than passengers (the user-in-charge), and AV fleet operators.

This consultation builds on three years of work, including two previous public consultations. The closing date to respond is 18 March 2021. The Law Commission aims to publish the final report and recommendations in the last quarter of 2021, saying:

"As the UK prepares for the introduction of automated vehicles on our streets, it's vital that the public have confidence in this technology.

"Our proposed legal framework will ensure that this technology can be safely deployed, whilst the flexibility built into the rules and regulations will allow us to keep up with advances in the technology."[14]

^[13] https://www.lawcom.gov.uk/project/automated-vehicles/ [14] Nicholas Paines QC, Public Law Commissioner

Treading carefully- ban on tyres 10 years or older

We previously reported on the proposed ban of tyres aged 10 years and older in England, Scotland and Wales in a bid to improve road safety[15].

From 1 February 2021, the Road Vehicles (Construction and Use) (Amendment) Regulations 2020 will not allow tyres over 10 years old to be used on the front steered axles of HGVs, buses, coaches or all single wheels fitted to a minibus^{[16] [17]}. If inspected at a DVSA enforcement check, tyres over 10 years old will be considered dangerous and attract an 'S' marked immediate prohibition notice.

It will also be a requirement for the manufacturer's date code to be legible on all tyres fitted to HGVs, trailers over 3.5 tonnes, buses, coaches and minibuses. If a tyre is a retread then the manufacturer date is taken from when the retread was carried out.

The following clarification has been provided for these scenarios:

• If the date code on the tyre is not legible on the affected wheel positions

Tyres without a legible manufacture date code, fitted to the front steered axle of HGVs, buses, coaches or single wheels fitted to a minibus will fail the annual test. If found at a DVSA enforcement check this would attract a delayed prohibition. However, if there are also obvious signs of deterioration of the tyre the action will be increased to an 'S' marked immediate prohibition notice.

 If the date code on the tyre is not legible on other wheel positions

If the manufacturer date code is not legible on other wheel positions, this will also be an offence and a minor fail result will be recorded at the annual test. This would not

prevent the issue of a pass certificate but there would be an expectation that the tyre is replaced. If the date code is not legible at an enforcement check an inspection notice would be issued and again, the tyre should be replaced.

 Using tyres more than 10 years old on other wheel positions

It is the operator's responsibility to make sure they have an adequate tyre management system in place and that they regularly consider the risks associated with using older tyres, even if the law permits. Where tyres more than 10 years old are legally used on other wheel positions, their age should be recorded and a specific risk assessment is completed, that considers the distance, speed and loading conditions that the vehicle will operate under (for example, operating only in urban areas).

Using old tyres on historic vehicles

The new regulations exempt noncommercial vehicles aged 40 years and older from these requirements.

The DVSA has confirmed that operators who fail to demonstrate they are adequately managing their tyres may be referred to the Traffic Commissioner. Drivers are advised to carefully check the vehicle tyres to avoid being caught out.

 ^{[15] &}lt;a href="https://www.clydeco.com/en/insights/2020/07/safety,-health-and-environment-july-update">https://www.clydeco.com/en/insights/2020/07/safety,-health-and-environment-july-update
 [16] 9 to 16 passenger seats
 [17] https://movingon.blog.gov.uk/2020/12/09/ban-on-tyres-over-10-years-old-for-heavy-vehicles-and-some-minibuses/

On your bike! Council faces judicial review over cycle lane removal

"[The cycle lane] has been ripped out after just weeks. This is a scandal. During its brief life it was a huge success. Bicycle usage more than doubled to between 3,000 to 4,000 daily users. Safety improved. Families, School children, health workers, local shoppers, professors, students, commuters all enjoyed this route, to which there is no safe alternative."[18]

A campaign group plans to bring a judicial review challenge against a London council's decision to dismantle a temporary cycle lane before its trial period had ended^[19].

The cycle lane was installed on Kensington High Street as part of a £300,000 government-funded trial in September this year. Seven weeks later, Kensington and Chelsea Council decided to remove the lane after receiving complaints from borough residents and business owners.

However, Transport for London data shows 4,000 cyclists a day were using the new lane on Kensington High Street in early October 2020, levels that would usually only be seen in summer months when cycling levels are higher.

Better Streets for Kensington & Chelsea, in collaboration with the Environmental Law Foundation, challenged claims that businesses on the road opposed the cycle lane. The group said: "We've asked businesses on the high street – they loved it and had no idea it was being removed." They also pointed out that congestion had not been made any worse.

In response, Cllr John Thalassites, Lead Member, Planning and Transport at Kensington and Chelsea, said removing the lane was based on feedback received from borough residents which mostly opposed the trial, adding: "Threatening us with legal action or financial penalties will make no difference to our decision, London boroughs aren't here to be bullied into submission through sanctions....Locally, three quarters of businesses are against the scheme. On this basis we made our decision."

The decision will now be reviewed and discussed by senior councillors at a meeting in March^[20].

The Mayor of London, Sadiq Khan, added that he is looking into "all other options" to oppose the council's decision.

"We're going to get back the money that we spent on that cycle lane, and we're also going to consider all other options about that particular road, because the reality is it's an important road....This council has persistently refused to have cycle lanes in their borough. This cycle lane is working its working really well. It's used by thousands of cyclists."

^[18] Better Streets for Kensington & Chelsea

^[19] https://www.localgovernmentlawyer.co.uk/transport-and-highways/443-transport-and-highways-news/45608-council-facing-judicial-review-over-removal-of-trial-cycle-lane

^[20] https://webcache.googleusercontent.com/search?q=cache:pTyI4-oMoDMJ:https://www.standard.co.uk/news/transport/cycle-lane-kensington-chelsea-removal-decision-b780021.html+&cd=4&hl=en&ct=clnk&gl=uk

Charging on the go - electric vehicles powered by Scalextric roads

[The trial could] "help encourage the mass adoption of electric vehicles by overcoming significant barriers around charging and range anxiety". [21]

The first "Scalextric-style" road that can charge electric cars as they go could soon become a reality^[22], further fuelling the electrical vehicles revolution.

Research is being carried out into the feasibility of embedding chargers beneath road surfaces to power cars, vans, buses and lorries. A trial in Coventry will seek to establish whether the technology could play a role, particularly for buses and HGVs which are constantly on the move and require more power than cars.

The technology uses small wireless chargers positioned under asphalt and a receiver on the bottom of a vehicle to relay energy to the battery – a similar system to wireless battery charging in mobile phones. The scheme is being led by Western Power Distribution, an electricity operator.

Cenex, a consultancy, will review existing research into the technology before Coventry University begins a more comprehensive feasibility study. The results are expected by February 2022, with an initial trial to be announced later in the year.

However, critics say that it is expensive to install and may not be compatible with vehicles. There is also scepticism about the system's efficiency and cost, with doubts that it could ever charge at the same rate as plugging in a car.

Wireless charging has already been introduced for smartphones but is in its infancy for electric vehicles. Highways England considered a trial of the system five years ago but it was eventually suspended. Yet as the number of electric cars on British roads continues to rise, demands have been renewed for more public charge points. More than 144,000 plug-in cars — electric or plug-in hybrids — have been sold so far this year, more than twice as many as in the same period last year. Numbers are expected to continue to rise in coming years following the government's decision to ban the sale of new petrol and diesel cars from 2030, which we reported on in our previous update ²³.

Ricky Duke, an innovation and low carbon network engineer at Western Power, said:

"The ability to charge your vehicle while on the move would be a massive game-changer for the nation and the launch of our study marks an important milestone in our journey towards identifying new and exciting ways to support the mass adoption of electric vehicles."

^[21] Western Power

^{2]} The Times, Friday 18 December 2020

^{23]} https://www.clydeco.com/en/insights/2020/12/safety-health-and-environment-regulatory-motor-cri

The green revolution continues- first all-electric bus cities

"As we build back greener from Covid-19, we can provide people with more environmentally-friendly transport and cleaner air. Coventry and Oxford could soon be at the forefront of our plans for a new era of bus services, helping us develop the green transport network of the future." [24]

Following on from the electric car revolution, Coventry and Oxford are developing proposals to become the first parts of the UK to run allelectric bus services^[25].

The cities are developing business cases in an England-wide competition to switch an entire town or city's bus fleet to electric vehicles. Each area could be awarded up to £50 million to not only replace its entire fleet of buses with all-electric versions, but to also install new infrastructure, such as charging stations, and pay for electric grid updates.

The government will work with the 2 local authorities to finalise their business cases over the coming weeks.

The change to a cleaner and greener bus fleet will help improve air quality and reduce emissions, helping further deliver on the government's efforts to decarbonise the transport network, as well as support local businesses and jobs in the UK developing green buses

Andy Street, the Mayor of the West Midlands, said:

"This news is brilliant for Coventry and the West Midlands, and I am delighted the Secretary of State and his department have once again put their faith in our region to deliver. Turning all of Coventry's bus fleet electric is not only a major boost to public transport in the city, but it will also help tackle the climate emergency we face both here in the West Midlands and the wider UK."

^[25] https://www.gov.uk/government/news/coventry-and-oxford-set-to-be-uks-first-all-electric-bus-cities

Driving in the EU post-Brexit

As the UK starts to grapple with the implications of Brexit, an agreement has now been secured with all 27 EU Member States to recognise UK licences without the need for an International Drivers Permit. Once Covid restrictions are lifted, UK drivers can continue to drive in the EU without an IDP.

Driver CPC for lorry drivers^[26]

Lorry drivers need a Driver CPC qualification and card to drive a lorry professionally in the UK, the EU, Iceland, Liechtenstein, Norway and Switzerland.

1. If you work for a UK company and have a UK Driver CPC card

Drivers can still use their UK Driver CPC card to drive to or through EU countries for all international journeys that UK companies are allowed to make.

2. If you work for an EU company and have a UK Driver CPC card

The UK Driver CPC card may no longer be recognised in EU countries. Drivers should check with the relevant organisation in the country where they live and work to find out what they need to do.

Drivers' hours' documents and tachographs

Those who drive a goods vehicles over 3.5 tonnes on international journeys must follow the rules on drivers' hours and tachograph use.

Drivers must have:

- tachograph charts and any legally required manual records for the current day and the previous 28 calendar days
- the driver's digital smart card

If a driver has been sick or taken other time off in the 28 days before their journey they should

carry a form (called an 'attestation form') from their employer.

Vehicle and trailer insurance (green cards)

A 'green card' is proof of motor insurance cover when driving abroad. Drivers should carry one for the vehicle driven in the EU (including Ireland), Andorra, Iceland, Liechtenstein, Norway, Serbia or Switzerland.

Drivers will need to carry more than one green card if:

- they have fleet or multi-car insurance a green card is needed for each vehicle
- their vehicle is towing a trailer one is needed for the towing vehicle and one for the trailer or caravan
- they have 2 policies covering the duration of the trip, for example, if the policy renews during the journey

Electronic versions of green cards are not acceptable- a physical copy must be carried when driving abroad.

Hauliers advice on market access rules

UK and EU operators will continue to be able to provide services to, from and through each other's territories. Hauliers can also continue to make some additional movements within the other's territory.

Under the Agreement, a UK haulier will be able to undertake unlimited bilateral (point-topoint) journeys to and from the EU and unlimited transit journeys through the EU to a non-EU country.

Up to two additional movements in the EU will also be possible – cabotage [27] or cross-trade [28] – following a laden journey [29] from the UK, with a maximum of one cabotage movement, performed within a 7-day period.

^[26] https://www.gov.uk/guidance/driver-documents-required-for-international-road-haulage
[27] Cabotage is moving goods between two points within one EU Member State e.g. from Paris to Lille
[28] Cross-trade is moving goods between two EU Member States, e.g taking a load from Paris to Brussels
[29] A laden journey is a journey where a haulier is moving goods

Both additional movements may be cabotage movements in Ireland for Northern Ireland operators, provided they follow a laden journey from Northern Ireland, and are performed within 7 days.

Drivers will still need to:

- comply with traffic management regulations in Kent, such as Operation Brock, if congestion builds at the border.
- use Check an HGV is Ready to Cross the Border service before reaching Kent.

What action should I take?

Drivers should check their journeys are covered by the Trade Cooperation Agreement. If not, an ECMT permit may be needed for a third crosstrade journey in the EU, or to make a journey to another country that is part of the ECMT system in January and/or February.

Permits will only be issued for journeys that involve a third cross-trade journey or ECMT member country and drivers may be asked to provide evidence of previous trips or future contracts. The DVSA will only issue permits to cover journeys that commence in January and February and drivers must return completed ECMT logbooks within two weeks of the expiry of the permit. ECMT permits cannot be used for cabotage journeys.

Information for bus and coach operators

<u>Interbus Agreement – occasional services</u>

The UK joined the Interbus Agreement on 1 January, ensuring international bilateral (point-to-point) occasional (i.e. unscheduled) journeys to and from the EU to continue.

Operators will not be able to transport passengers between two locations within the EU (known as cabotage), except as part of services between Northern Ireland and the Republic of Ireland.

Interbus does not yet allow regular (scheduled) or special regular services.

Regular and Special Regular services

The UK-EU Free Trade Agreement will allow international bilateral (point-to-point) regular (i.e. scheduled) and special regular services to continue to operate.

Operators will not be able to transport passengers between two locations within the EU (known as cabotage), except as part of services between Northern Ireland and the Republic of Ireland.

Island of Ireland services

Services operating between Northern Ireland and the Republic of Ireland will continue to operate with no changes.

Operators will continue to be able to transport passengers between two locations within the Republic of Ireland as part of a service between Northern Ireland and the Republic of Ireland.

Operators' licences

Regardless of what kind of international service you are running, from 1 January 2021 drivers will need to carry a certified true copy of their Operators' Licence on board at all times.

Certified copies are being sent to operators in the post automatically.

Driver CPC

Drivers will still need Driver CPC to drive professionally in the UK and the EU after Brexit. You must still complete your Driver CPC periodic training by your deadline.

Police to crackdown on illegal e-scooters

"It is against the law to ride privately owned electric scooters on public roads and locally. The force has undertaken an operation targeting the illegal and antisocial use of vehicles in Clifton...Where appropriate officers will seize, and have seized, vehicles that have been driven or ridden illegally or consistently in an antisocial manner." [30]

We previously reported that electric scooters were to be trialled on the roads for the first time, with different areas reporting mixed results [31].

The police have recently indicated that anyone riding an electric scooter given over Christmas could have them confiscated as it is illegal to ride them on roads, pavements and in parks [32]. Those who ride them illegally on the pavement could incur six penalty points on their driving licence.

Electric scooters are classified as personal light electric vehicles so are treated as motor vehicles and require insurance and a valid driving licence. Although e-scooters are for sale legally, only those hired through approved rental companies can be ridden on public roads. Nottinghamshire police has said that officers will seize e-scooters if they are deemed a nuisance.

The Transport Committee called for robust enforcement measures to eliminate pavement use of e-scooters, which the report says is dangerous and anti-social.

PC Adam Smith confirmed:

"[E-scooters] can be seized under section 165 powers, the same as any other vehicle with no insurance."

Our experienced Motor Crime Team is here to assist with all motor, fleet and logistics queries. In addition, if you would like to discuss any aspect of this article further please get in touch with a member of our team at MotorCrimeTeam@clydeco.com or call us directly on 0161 240 8514.



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^[31] https://www.clydeco.com/en/insights/2020/07/covid-19-uk-safety,-health-and-environment-regulat

^[32] The Times, 8 January 2021

440

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4,000

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